

BEFORE THE OFFICE OF CAMPAIGN FINANCE
DISTRICT OF COLUMBIA BOARD OF ELECTIONS AND ETHICS
FRANK D. REEVES MUNICIPAL BUILDING
2000 14TH STREET, N.W. SUITE 420
WASHINGTON, D.C. 20009
(202) 671-0550

IN THE MATTER OF)	
)	DATE: October 29, 2002
Thomas Tucker)	
(former) Special Assistant to the)	
Deputy Chief of Staff for)	
External Affairs)	DOCKET NO.: CF 2002-14
Executive Office of the Mayor)	

ORDER

Statement of the Case

This matter came before the Office of Campaign Finance (hereinafter OCF) pursuant to a referral from the Office of the Inspector General for the District of Columbia (hereinafter OIG) in a published report entitled "Report of Investigation of the Fundraising Activities of the Executive Office of the Mayor (EOM)" (hereinafter Report) (OIG Control Number 2001-0188 (S)). In the Report, the OIG has alleged that certain current and former employees engaged in behavior that violated provisions of the District of Columbia Personnel Manual Standards Of Conduct.

In the instant case, the Inspector General has alleged that Thomas Tucker, former Special Assistant to the Deputy Chief of Staff for External Affairs (hereinafter respondent) engaged in private or personal business activity on government time and with the use of government resources on behalf of the Church Association for Community Services (hereinafter CACS), the For The Kids Foundation (FTKF), the Mayor's Prayer Breakfast and the August 2000 Democratic National Convention in violation of §§1800.1, 1803.1(e) and (f), 1803.2(A), 1803.10, 1804.1(b), (d), (e) and (i), 1805.2, and 1806.1 of the District Personnel Manual (hereinafter DPM).¹

¹ DPM §1800.1 reads as follows:

Employees of the District government shall at all times maintain a high level of ethical conduct in connection with the performance of official duties, and shall refrain from taking, ordering or participating in any official action which would adversely affect the confidence of the public in the integrity of the District government.

DPM §1803.1(e) and (f) read as follows:

An employee shall avoid action, whether or not specifically prohibited by this chapter, which might result in, or create the appearance of the following:

...

(e) Making a government decision outside official channels; or

(f) Affecting adversely the confidence of the public in the integrity of government.

DPM §1803.2(A) reads as follows:

(A) District employees shall not solicit or accept, either directly or through the intercession of others, any gift, gratuity, favor, loan, entertainment, or other like thing of value from a person who singularly or in concert with others:

(a) Has, or is seeking to obtain, contractual business or financial relations with the D.C. government;

(b) Conducts operations or activities that are subject to regulation by the D.C. government; or

(c) Has an interest that may be favorably affected by the performance or non-performance of the employee's official responsibilities.

DPM §1803.10 reads as follows:

An employee shall not interfere with or obstruct an investigation by a District Agency.

DPM §§1804.1(b), (d), (e), and (i) read as follows:

An employee may not engage in any outside employment or other activity, which is not compatible with the full and proper discharge of his or her duties and responsibilities as a government employee. Activities or actions which are not compatible with government employment include but are not limited to, the following:

...

(b) Ordering, directing, or requesting subordinate officers or employees to perform during regular working hours any personal services not related to official D.C. government functions and activities;

...

(d) Maintaining financial or economic interest in or serving (with or without compensation) as an officer or director of an outside entity if there is any likelihood that such entity might be involved in an official government action or decision taken or recommended by the employee;

(e) Engaging in any outside employment, private business activity or interest, which permits an employee, or others, to capitalize on his or her official position[; and]

...

(i) Engaging in any outside employment, private business activity, or other interest which is in violation of federal or District law.

DPM §1805.2 reads as follows:

No District employee... may acquire an interest in or operate any business or commercial enterprise, which is in any way related, directly or indirectly, to the employee's official duties, or which might otherwise be involved in an official action taken or recommended by the employee, or which is in any way related to matters over which the employee could wield any influence, official, or otherwise.

DPM §1806.1 reads as follows:

A District employee shall not use or permit the use of government property, equipment or material of any kind... for other

Upon OCF's evaluation of the material amassed in this inquiry, it was decided that the parameters of this inquiry extended solely to the DPM employee conduct regulations. There was not any credible evidence that the respondent committed any violations of the District of Columbia Campaign Finance Reform and Conflict of Interest Act of 1974 (the Act), as amended, D.C. Official Code §§1-1101.01 et seq. (2001 Edition). Any alleged violation of the Act by the respondent would be predicated upon the premises that respondent realized personal gain through official conduct, engaged in any activity subject to the reporting requirements and contribution limitations of the Act, or used District government resources for campaign related activities.² See D.C. Official Code §1-1106.01. Additionally, fines may be assessed for any violation of the Act. OCF's review did not reveal any such activity.

Accordingly, where a violation of the DPM employee conduct regulations has occurred, OCF is limited with respect to any action which otherwise may be ordered. Inasmuch as the DPM consists of personnel regulations, fines cannot be assessed. The Director may only recommend disciplinary action to the person responsible for enforcing the provisions of the employee conduct rules against the respondent.

By letter dated August 26, 2002, OCF requested respondent to appear at a scheduled hearing on September 3, 2002. The purpose of the hearing was to show cause why the respondent should not be found in violation of the Standards of Conduct, which the respondent was alleged to have violated in the OIG Report.

Summary of Evidence

The OIG has alleged that the respondent violated the above referenced provisions of the DPM as a result of his fundraising activities, solicitation of funds for private entities and his failure to deposit solicited funds into an appropriate government account. Consequently, the OIG has alleged that the respondent engaged in activity which was not compatible with the full and proper discharge of his responsibilities as a government employee and that this activity created the appearance of an impropriety.

than officially approved purposes.

¹ Gregory McCarthy (hereinafter McCarthy) is currently EOM Deputy Chief of Staff for Policy and Legislative Affairs. From January 1999 until August 2001, he was EOM Director of Policy Evaluation. The OIG also alleged that McCarthy violated the above referenced provisions of the DPM as a result of his role as a director for MWCBC. The OCF Director agreed and advised the Mayor, by Order, to admonish McCarthy his prohibitive conduct; and to ensure that McCarthy participates in scheduled meetings and workshops to become closely familiar with the provisions and prohibitions of the DPM Standards of Conduct.

² D.C. Law 14-36, "Campaign Finance Amendment Act of 2001," effective October 13, 2001, prohibits the use of District government resources for campaign related activities.

On September 3, 2002, the respondent appeared pro se before the OCF at a scheduled hearing conducted by William O. SanFord, Esq., Senior Staff Attorney. Sonya Brunson-Culp, Financial Reporting Examiner, was also present.

Synopsis of Proceedings

The respondent is a former Special Assistant to the Deputy Chief of Staff for External Affairs in the Executive Office of the Mayor (hereinafter EOM). He was employed in that position from January through December 2000, when he was terminated. The government of the District of Columbia does not currently employ him.

During examination by Mr. SanFord, the respondent testified that he had reviewed the allegations against him in the OIG Report. The respondent stated that he observed employees of the Millennium Washington Capitol Bicentennial Corporation (MWCBC) working out of District government offices but denied any involvement in matters connected to that entity. The respondent further stated that during his employment with the District government, Mark Jones, EOM Deputy Chief of Staff supervised him; and that he also reported to former Chief of Staff, Dr. Abdusalam Omer. Respondent continued that Jones terminated him in December 2000.

Respondent testified that, although Jones started FTKF prior to his employment, he was assigned by Jones to incorporate and obtain a tax identification number for the organization. Respondent stated that Jones instructed him to ask Cloria Canty, who was also employed by the government, for permission to use her home address as a mailing address for FTKF. Respondent also conceded that he asked Canty to sign an application for tax exempt status on behalf of FTKF. Respondent further stated that he raised money for the Mayor's 2000 Holiday Party for foster kids, but denied raising the funds on government time. According to the respondent, he was on leave when he was soliciting funds for the Mayor's Holiday Party and a reception for D.C Olympic Bronze Medallist Clarence Vinson. The respondent further stated that Mayor Williams was clearly aware of the fundraising because the mayor was briefed by Jones daily; Jones, in turn, discussed the briefings with him. Accordingly, the respondent stated that any telephone calls he made or fundraising activity in which he participated were pursuant to specific instructions from Jones. The respondent denied raising or managing funds for the Mayor's 2000 Prayer Breakfast, the Church Association for Community Services (hereinafter CACS) or for travel to the Democratic National Convention (hereinafter DNC) in August 2000. Moreover, the respondent emphatically stated that he was a subordinate who did not initiate any of the activity in question and engaged in a limited degree of fundraising as a result of being instructed to do so by his superiors.

Findings of Fact

Having reviewed the allegations and the record herein, I find:

1. Respondent, Thomas Tucker, who was the former Special Assistant to the Deputy Chief of Staff for External Affairs, Mark Jones (hereinafter Jones), in the Executive Office of the Mayor (hereinafter EOM), in 2000, was a public official required to file a Financial Disclosure Statement (hereinafter FDS) with OCF.
2. FTKF was a non-profit organization created early in 2000 by Vivian Byrd, then Trade Development Specialist, D.C. Lottery and Charitable Games Control (DCLB), and Jones, then Deputy Director of Operations, DCLB, designed to develop and implement, under the auspices of the Mayor, civic programs for the benefit of the children of the District of Columbia. Report at 157.
3. Jones conducted the business of FTKF at his government office at 1 Judiciary Square, 441 4th Street, N.W., Washington, D.C. See In the Matter of Mark Jones, Docket No. PI 2001-101 (November 7, 2001) (hereinafter Matter of Jones).
4. In April 2000, pursuant to a referral by Jones, respondent requested and obtained the signature and consent of Cloria Ann Cantey (hereinafter Cantey) on a blank IRS form and the use of her home address for FTKF.
5. The Mayor's 2000 Holiday Party for foster children was a reception administered by Jones, through Leslie Pinkston, for District foster children identified through the District of Columbia Child and Family Services Agency. Report at 161.
6. "During the 2000 Summer Olympics in Sydney, Australia, Clarence A. Vinson, a bantamweight boxer from the District of Columbia, won a bronze medal for the United States[; and t]o celebrate this accomplishment by a Washington, D.C. native, EOM hosted a reception for Vinson on November 29, 2000, at the MCI Center's National Sports Gallery." Report at 141.
7. The Mayor's 2000 Holiday Party for foster children and the Vinson Reception were official District government events, sponsored by Mayor Anthony A. Williams (hereinafter the Mayor).
8. The respondent solicited funds for the Mayor's 2000 Holiday Party for foster children and the Vinson Reception from, inter alia, businesses doing business with the District of Columbia, on behalf of the District of Columbia.
9. Any fundraising activity conducted on behalf of the Mayor's 2000 Holiday Party for foster children and the Vinson Reception was specifically assigned to the respondent by his supervisor, Jones.

10. Respondent was not involved in any fundraising activity for the Mayor's 2000 Prayer Breakfast, the CACS, or for travel to the DNC in August 2000.

Conclusions of Law

1. Respondent was an employee of the District of Columbia government and was subject to the enforcement provisions of the employee conduct regulations at DPM §§1800 et seq.
2. In 2000, Jones conducted the business of FTKF, notwithstanding that it was a private, non-profit organization, out of his office at 1 Judiciary Square, 441 4th Street, N.W., Washington, D.C.; and the respondent believed that FTKF business was government business.
3. Respondent used District of Columbia government time and resources to perform tasks with regard to FTKF in 2000; and, notwithstanding the fact that respondent was directed by his supervisor, Jones, to perform said tasks, it is more likely than not that the respondent was well aware that his actions violated the employee conduct regulations because respondent requested a District government employee, Cantey, to sign a blank IRS form and to allow the use of her home address for FTKF business, which was operated out of 1 Judiciary Square, 441 4th Street, N.W., Washington, D.C.
4. Respondent's assistance in the management of FTKF, notwithstanding that the purpose and proceeds thereof ostensibly inured to the District of Columbia government, was private, corporate business.
5. The Mayor's 2000 Holiday Party for foster children and the Vinson Reception were funded through solicitations by the respondent from businesses doing business in the District of Columbia, on behalf of the District of Columbia government. Contra Matter of Jones (Jones violated the Standards of Conduct when he solicited funds from businesses doing business in the District of Columbia, on behalf of various private, non-profit organizations.)
6. Solicitation by District government employees from businesses doing business in the District of Columbia, on behalf of the District of Columbia government, is not within the purview of the DPM Standards of Conduct.³
7. The Mayor's 2000 Holiday Party for foster children and the Vinson Reception,

³ Whether or not this action violates the "Anti-Deficiency Act" must be determined by the Office of the Corporation Counsel or the Office of the Chief Financial Officer. Report at Specific Finding 29.

notwithstanding that they were funded through solicitations by the respondent from businesses doing business in the District of Columbia, but on behalf of the District of Columbia, were official District government events, sponsored by the Mayor, to promote the District of Columbia.

8. Respondent used District of Columbia government time and resources to plan and organize the Mayor's 2000 Holiday Party for foster children and the Vinson Reception; and, respondent did not violate any employee conduct regulations because the respondent was engaged in government business.
9. Respondent used District of Columbia government time and resources to plan and organize the Mayor's 2000 Holiday Party for foster children and the Vinson Reception; and, respondent did not violate any employee conduct regulations because the respondent was directed in these tasks by his supervisors, Jones and Omer.

Recommendation

Had Thomas Tucker remained an employee, it would have been my recommendation that the Director advise his supervisor to take disciplinary action against Thomas Tucker based upon his violation of the Standards of Conduct to include a change in his assigned duties, corrective or adverse action, his disqualification for a particular assignment, pursuant to DPM §1801.2.

It should be noted that prior to the issuance of the Report, the Mayor appointed an EOM Ethics Counselor and scheduled meetings and workshops to inform and clarify each staff member as to the provisions and prohibitions of the Standards of Conduct.

Because Thomas Tucker is no longer a District government employee, and, because the Mayor of the District of Columbia has taken steps to definitively and thoroughly inform each EOM staff member as to provisions and prohibitions of the Standards of Conduct, I hereby recommend that the Director advise the Mayor to be always cognizant of this responsibility.

Date

Kathy S. Williams
General Counsel

ORDER OF THE DIRECTOR

The circumstances surrounding the instant misconduct involved an employee who believed that his conduct was within the parameters of his job description. But, Thomas Tucker is no longer a District government employee, and, the Mayor has taken appropriate measures, by appointing an EOM Ethics Counselor and conducting extensive workshops, to apprise and re-apprise his staff of the provisions and prohibitions of the Standards of Conduct. Thus, the Mayor has taken appropriate measures to ensure the integrity of government. I advise the Mayor to remain ever vigilant in this regard.

This Order may be appealed to the Board of Elections and Ethics within 15 days from issuance.

Date

Cecily E. Collier-Montgomery
Director

Parties Served:

Thomas Tucker
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Washington, D.C. 20005

Charles Maddox, Esq.
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SERVICE OF ORDER

This is to certify that I have served a true copy of the foregoing order.

S. Wesley Williams
Investigator

NOTICE

Pursuant to 3 DCMR § 3711.5 (1999), any fine imposed by the Director shall become effective on the 16th day following the issuance of a decision and order, if the respondent does not request an appeal of this matter. If applicable, within 10 days of the effective date of this order, please make a check or money order payable to the D.C. Treasurer, c/o Office of Campaign Finance, Suite 420, 2000 14th Street, NW, Washington, D.C. 20009.